

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.201

CRM-M-21788-2022 (O&M)

Reserved on : 23.11.2022

Pronounced on: 01.12.2022

Samdarsh Kumar @ Joseph

..... Petitioner

VERSUS

State of U.T. Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Prateek Gupta, Advocate and
Mr. Rahul Soi, Advocate, for the petitioner.

Mr. A.M. Punchhi, Public Prosecutor with
Mr. Anupam Bansal, Addl. Public Prosecutor
for the respondent-U.T. Chandigarh.

SUDHIR MITTAL, J.

An FIR dated 19.06.2020 was registered against the petitioner under Section 22 of the NDPS Act, 1985 (hereinafter referred to as the Act) as well as Section 25 of the Arms Act, 1959 and Section 188 Indian Penal Code, 1860 at Police Station Sector 39, Chandigarh. Recovery was made of 11 injections of Pheniramine Maleate (10 ml. each) and 15 injections of Buprenorphine (2 ml. each) as well as one desi pistol with 06 live cartridges.

First bail application of the petitioner was rejected vide order dated 15.10.2020 passed in CRM-M-30386-2020 primarily on the ground

that the accused had been in custody only for 03 months and 19 days and there were large number of criminal cases pending against him. While deciding the said case, CRM-M-19523-2020 titled as **Prem Singh Bisht and another Vs. U.T. Chandigarh and others** was also decided. The petitioner therein is the employer of the petitioner herein and he had filed the said petition for transfer of investigation of the present FIR to the Central Bureau of Investigation on the ground of false implication. His case was that the petitioner herein had been falsely implicated as FIR dated 24.10.2017 was registered against some police personnel under Section 7 of the Prevention of Corruption Act, 1988 for demanding a bribe from the complainant of the said FIR. The allegation was that fake implication was done to coerce him as well as the complainant of FIR dated 24.10.2017 to turn hostile. Certain evidence was relied upon. Having taken into consideration all the facts and evidence brought on record, a finding was returned that false implication was not established.

Second bail application, viz. CRM-M-13196-2021 was also rejected vide order dated 27.09.2021 after recording a finding that the conditions prescribed by Section 37 of the Act were not fulfilled.

Custody certificate dated 23.11.2022 issued by Amandeep Singh (C.P.S.) Addl. Superintendent, Model Jail, Chandigarh has been filed in Court. The same is taken on record. A perusal thereof shows that the petitioner has undergone actual custody of 02 years, 05 months and 05 days. One conviction for offence under Section 307 IPC has been recorded and trial is pending in 05 other criminal cases.

Learned counsel for the petitioner has submitted that the status of pending criminal cases mentioned in the aforementioned custody certificate is incorrect. There is only one case under Sections 420, 467, 468, 120-B IPC and Sections 66-C & 66-D of the Information Technology Act, 2000 pending. This submission has not been contradicted by the learned Public Prosecutor and thus, for the purpose of deciding this case, it is being presumed that there is one previous conviction and one criminal case is pending trial.

Learned counsel for the petitioner has submitted that Rule 66 of the NDPS Rules, 1985 (hereinafter referred to as the Rules) permits possession of upto 100 dozes of a psychotropic substance. Recovery of only 15 dozes has been made from the petitioner which is well within the permissible limit. The drug Pheniramine Maleate is not a psychotropic substance and the same has to be ignored for the purpose of grant of bail. To support this argument, reliance has been placed upon Supreme Court judgment in **Sajan Abraham Vs. State of Kerala, (2004) 4 SCC 441**, a Division Bench judgment of this Court in **Saleem Mohd. Vs. State of Punjab, 2015 (25) RCR (Criminal) 816**, a Single Bench judgment of this Court dated 13.01.2020 passed in CRM-M-36753-2019 titled as **Aruna @Runa Vs. State of U.T Chandigarh**, a Single Bench judgment in **Sukhwinder Singh @ Vicky Vs. State of Punjab, 2021 (1) RCR (Criminal) 177** and **Charanjit Kaur Vs. State of Punjab, 2022 (1) Law Herald 735**.

In response, learned Public Prosecutor has submitted that the petitioner cannot rely upon Rule 66 of the Rules as it is not his case that

the substance recovered from him was for personal use. From the very inception, it has been his case that he has been falsely implicated. In the instant petition also, one of the grounds taken is false implication. The recovery has not been admitted, therefore, reliance upon the said Rule is mis-conceived. He places reliance upon judgment dated 25.07.2018 passed in CRM-M-40371-2017 titled as **Sarbjit Singh @ Sabbi Vs. State of Punjab**, judgment dated 08.12.2020 passed in CRM-M-50796-2019 titled as **Manpreet Singh Vs. State of Punjab** and judgment dated 08.12.2020 passed in CRM-M-24656-2019 titled as **Kulwant Rai @ Rana Vs. State of Punjab**.

In my considered view, reliance upon Rule 66 (supra) is patently mis-conceived. There is no evidence on record that the petitioner had been prescribed the psychotropic substance recovered from him for some medical condition. It is not even his case that recovery was infact made. His case has been of to be implication. An argument raised can only be accepted, if, it is supported by facts. That being not the case, the argument based upon Rule 66 (supra) is rejected. The judgments relied upon by learned counsel for the parties are not being discussed as the argument itself is mis-conceived.

The second link of the argument of the petitioner is that even though, recovery is of commercial quantity, keeping in view the custody period, the petitioner is entitled to grant of regular bail without reference to Section 37(1)(b) of the Act. For this purpose, reliance has been placed upon judgment dated 07.09.2021 passed in CrI. Appeal No.965 of 2021 (arising out of SLP (Criminal) No.4432 of 2021) titled as **Dheeren**

Kumar Jaina Vs. Union of India decided by the Supreme Court as well as order dated 01.08.2022 passed in SLP (Criminal) No.5769-2022 titled as **Nitish Adhikary @ Bapan Vs. The State of West Bengal** also passed by the Supreme Court.

Learned counsel for the petitioner has also relied upon judgment dated 07.12.2021 passed in CRM-M-50518-2021 titled as **Naveen Vs. State of Haryana, 2022 (1) RCR (Criminal) 553**, judgment dated 23.09.2022 passed in CRM-M-13795-2022 titled as **Charanjit Singh @ Amritpal Vs. State of Punjab** as well as judgment dated 06.09.2022 passed in CRM-M-14227-2021 titled as **Harpartap Singh Vs. State of Punjab**. He has also relied upon **Ankush Kumar @ Sonu Vs. State of Punjab, Law Finder Doc Id #1139114**, **Pankaj Vs. State of Punjab, Law Finder Doc Id # 2013404** and judgment dated 20.05.2022 passed in CRM-M-20943-2022 titled as **Gurjant Singh Vs. The State of Punjab**.

On the other hand, learned Public Prosecutor has argued that in case of recovery of commercial quantity, the twin conditions laid down in Section 37(1)(b) of the Act must be complied with. Moreover, the second bail application of the petitioner was rejected on ground of non-fulfillment of conditions laid down in Section 37(1)(b) of the Act. No new evidence has come on record which would establish that the petitioner was likely to be acquitted and that he would not commit any offence while on bail. Thus, the argument is mis-conceived. He relies upon order dated 21.10.2022 passed in Criminal Appeal Nos.1841 & 1842 of 2022 (arising out of SLP (Criminal) Nos. 5505 & 5506 of 2022)

titled as **Union of India (NCB) Etc. Vs. Khalil Uddin Etc.** as well as order dated 07.05.2022 passed in CRM-M-43795-2020 titled as **Satnam Singh Vs. State of Punjab**. It has also been submitted that the trial is nearing completion and only 02 prosecution witnesses remain to be examined.

It has been noted hereinabove that the second bail application of the petitioner had been rejected as he had not been able to show that the twin conditions placed by Section 37(1)(b) of the Act were fulfilled. No new evidence has been brought on record to take a different view and thus, the judgments relied upon by the petitioner do not help him. None of these judgments say that in a subsequent bail application, a different view can be taken, even if, there are no changed circumstances.

Despite the above, since learned counsel for the petitioner has referred to a large number of judgments, I deem it appropriate to make a reference thereto. In **Dheeren Kumar Jaina** (supra), a perusal of Para No.5 thereof shows that only 0.23 grams of ganja was recovered from the appellant therein. The same not being commercial quantity, the judgment is distinguishable. In **Nitish Adhikary @ Bapan** (supra), quantity recovered has not been mentioned and it is thus, presumed that the recovery therein was not of commercial quantity. Thus, the said judgment is also distinguishable. That leaves us with various Single Bench judgments passed by this Court. These can be divided into two sets. In the first set, are the judgments of **Ankush Kumar** (supra) and **Gurjant Singh** (supra). In these judgments, even though, the practicability of returning findings as prescribed by Section 37(1)(b) of

the Act have been adversely committed upon, bail has been granted only after recording satisfaction regarding the twin conditions prescribed therein. These judgments do not help the petitioner as I am unable to record my satisfaction, keeping in view the observations made hereinabove. The second set comprises judgments in **Naveen** (supra), **Harpartap Singh** (supra) and **Charanjit Singh @ Amritpal** (supra). In these judgments, it is respectfully noted that reliance upon **Dheeren Kumar Jaina** (supra) is mis-placed because recovery was only of 0.23 grams ganja. The other Supreme Court judgments referred to in the said cases are contrary to the judgment passed in **Khalil Uddin** (supra), wherein, it has been held ‘in our considered view, in the face of the mandate of Section 37 of the Act, the High Court could not and ought not to have released the accused on bail.’ Thus, I am respectfully unable to subscribe to the view taken in this set of cases.

In view of the difference of opinion referred to hereinabove, let this matter be placed before Hon’ble the Chief Justice for constituting a Larger Bench to settle the issue of fulfillment of the twin conditions prescribed in Section 37(1)(b) of the Act before grant of bail in a case of recovery of commercial quantity under the Act.

So far as this case is concerned, because the petitioner cannot rely upon Rule 66 of the Rules nor can he pray for taking a different view regarding satisfaction of the conditions prescribed under Section 37(1)(b) of the Act, the petition is dismissed. Keeping in view the fact that the trial is nearing completion, I deem it appropriate to direct the trial Court to complete the trial as expeditiously as possible, in any case, not later

than nine months from the date of receipt of certified copy of this judgment.

(SUDHIR MITTAL)
JUDGE

01.12.2022
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No